

PT 01-8

Tax Type: Property Tax

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

CATHOLIC CHURCH
DIOCESE OF JOLIET,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 00-PT-0029
(99-99-100)

P.I.N: 07-15-122-002

RECOMMENDATION FOR DISPOSITION
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCE: Mr. J. Daniel McGrath of James C. Byne & Associates on behalf of the Catholic Church Diocese of Joliet. (hereinafter the "applicant").

SYNOPSIS: This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on February 22, 2000. Said determination found that real estate identified by Will County Parcel Index Number 07-15-122-002 (hereinafter the "subject property") was not in exempt use, and therefore, did not qualify for exemption from 1999 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq* (hereinafter the "Code").

At issue herein are the following legal questions: (1) whether applicant is entitled to a pro-rated exemption from 1999 real estate taxes because it acquired ownership of the subject property on January 15, 1999; and, (2) whether applicant's post-acquisitional uses

of the subject property qualified as “exclusively religious” within the meaning of Section 15-40 of the Code.

The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Will County Board of Review (hereinafter the “Board”) on September 14, 1999. The Board reviewed applicant’s complaint and recommended to the Department that the requested exemption be granted. The Department, however, rejected this Recommendation by issuing the aforementioned determination, which found that the subject property was not in exempt use.

Applicant filed a timely appeal as to this partial denial but then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that the subject property be exempt from real estate taxes under Section 15-40 the Code, but only for 96% of the 1999 assessment year.

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established by the determination, issued by the Office of Local Government Services on February 17, 2000, finding that the subject property is not in exempt use.
2. Applicant, a diocese within the Roman Catholic Church,¹ obtained ownership of the subject property by means of a deed in trust dated January 15, 1999. Applicant Motion Ex. No. 2.

1. Tenets of the Roman Catholic Church include, *inter alia*, conducting various works of charity according to the teachings of Jesus Christ and dispensing charity to any person in need regardless of race, creed or financial position. Applicant Motion Ex. No. 1.

3. The Application for Property Tax Exemption (hereinafter the “Application”), received by the Department on October 4, 1999, indicates that the subject property is located at 201 Union Street, Joliet, IL and improved with a two story building.
4. The subject property is commonly known as Edmund House and located in located in a high crime, high poverty area of the City of Joliet. Applicant Motion Ex. No. 1.
5. Edmund House was dilapidated and uninhabitable when applicant purchased it. For that reason, members of the Christian Brothers, an order of priests within the Roman Catholic church, began making necessary repairs immediately after the date of purchase. Applicant Motion Ex. No. 3.
6. The repairs included, *inter alia*, patching various bullet holes, painting, replacing broken windows, and other work to make Edmund House habitable. *Id.*
7. As soon as repairs were completed, the Christian Brothers began using Edmund House as a facility to provide spiritual counseling, daily prayer services and other services, including temporary overnight shelter, to community residents. *Id.*

8. Members of the Christian Brothers who provided these services were required to live at Edmund House as part of their commitment to the Church, as were the lay volunteers who assisted the Brothers. *Id.*

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issues for decision herein necessarily become ones of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). Those issues are, precisely stated, whether: (1) applicant is entitled to a pro-rated exemption from 1999 real estate taxes because it acquired ownership of the subject property on January 15, 1999; and, (2) applicant's post-acquisitional uses of the subject property qualified as "exclusively religious" within the meaning of Section 15-40 of the Property Tax Code.

A. Pro-Ration Issue

With respect to the first inquiry, the statute governing alterations in exempt status due to changes in ownership is found in Section 9-185 of the Code. This provision, states, in pertinent part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-185.

In this case, the warranty deed proves that applicant obtained its "right of possession" on January 15, 1999. Accordingly, Section 9-185 mandates that any

exemptions granted herein be limited to the 96% of the 1999 assessment year which transpired on or after that date.

B. Use Issue

The first step in deciding whether the subject property qualifies for exemption under Section 15-40 is to set forth the pertinent Constitutional and statutory provisions as well as the applicable rules of statutory construction.

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-1 *et seq.* (hereinafter the “Code”). The Code provisions that govern disposition of this case are found in Sections 15-40 and 15-65(a) of the Code, which provide, in relevant part, for exemption of the following:

200/15-40. Religious purposes, orphanages, or school and religious purposes

All property used exclusively² for religious purposes,³ or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and use in conjunction therewith as housing facilities provided for ministers ... performing the duties of the vocation as

2. The word “exclusively” when used in Section 200/15-40 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

3. As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

ministers at such churches or religious institutions or for such religious denominations... [.]

A parsonage ... or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

200/15-65. Charitable purposes

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity.

35 ILCS 200/15-65(a).

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The applicable statute herein mandates that applicant demonstrate that it actually put the subject property to, or was actively developing said property for, some specifically identifiable exempt use during the period in question. *See*, 35 ILCS 200/15-40, 15-65(a). *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was completely vacant throughout the tax year

in question held non-exempt); *with*, Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828 (3rd Dist., October 13, 2000) (church property that was being actively tilled and mowed for eventual use as an extension to an existing church yard held exempt).

Here, applicant began adapting the subject property for use as a venue for furthering the beneficent community works of the Christian Brothers religious order immediately after obtaining ownership thereof. Performing such charitable works is an integral part of the organizational mission of the Church that the Christian Brothers serve. Therefore, any and all uses which enabled the Christian Brothers to carry out such activities, whether through active adaptation and development of the subject property or Christian Brothers' actual use thereof, constitute exempt uses for purposes of Sections 15-40 and 15-65. Lutheran Church of the Good Shepherd of Bourbonnais, *supra*; First Presbyterian Church of Dixon v. Zehnder, 306 Ill. App. 3d 1114, 1117 (2nd Dist. 1999).

I would briefly note, however, that the facts presented herein do suggest application of the parsonage provisions contained in Section 15-40. This is because applicant required members of the Christian Brothers order, and the laity who assisted them, to live at the subject property while working at Edmund House. Such a residency requirement is consistent with the one mandated by the parsonage provisions. McKenzie v. Johnson, 98 Ill.2d 87 (1983); Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431 (2nd Dist. 1987). Thus, applicant's satisfaction thereof, coupled with its compliance with the statutory ownership requirement, is legally sufficient to warrant granting applicant judgement as a matter of law for the period in question. Therefore, the Department's determination in this matter should be modified to reflect that the subject property is exempt from real estate taxes under Section 15-40 of the Property Tax Code, but only for 96% of the 1999 assessment year.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Will County Parcel Index Number 07-15-122-002 be exempt from real estate taxes under Section 15-40 of the Property Tax Code, (35 **ILCS** 200/1-1, *et seq.*), but only for 96% of the 1999 assessment year.

February 9, 2001
Date

Alan I. Marcus
Administrative Law Judge